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LONZO PICKETT, Tenant/Petitioner, v. IRIS C. LATTIMORE, Housing Provider/Respondent	Case No.: RH-TP-06-28717

FINAL ORDER

I. Introduction

On July 19, 2006, Tenant/Petitioner Lonzo Pickett filed Tenant Petition (TP) 28,717 with the Rental Accommodations and Conversion Division ("RACD") alleging violations of the Rental Housing Act of 1985 (the "Act") with respect to his housing accommodation at 520 Eastern Avenue, N.E., Apartment 201. Tenant appeared at the hearing on the tenant petition on January 23, 2006. Housing Provider did not appear. After determining that Housing Provider had been properly served with notice of the hearing, I received testimony from Tenant in support of his claims. For reasons given below, I find that Tenant has proven that Housing Provider implemented a rent increase at a time when the rental unit was not in substantial compliance with the District of Columbia Housing Regulations. I award rent refunds and interest totaling $138.06.

II. Analysis of the Evidence

A. Background

On November 18, 2004, Tenant, Lonzo Pickett, signed a lease for Apartment No. 201 at 520 Eastern Avenue, N.E., in Washington, D.C. The lease was executed by Mr. Pickett and Patricia Walker, agent for Anita Fisher, the building's owner at the time. Petitioner's Exhibit ("PX") 100.[1]

Sometime before July, 2005, the property was sold to Aeon Investment Group LLC. In July, 2005, Aeon sent the building tenants two letters announcing changes in the terms of the relationship between the Housing Provider and the tenants. A letter of July 5, 2000, advised that Aeon would assume management of the building and that each resident would be "required to sign a lease that would begin October 1, 2000 [sic] and end September 30, 2005." PX 102. A letter of July 25, 2005, stated that new lease agreements would be negotiated between July 26 and July 30 and that "increases are anticipated because the currents [sic] rates are below comparable units in the area." In addition tenants would be charged a utility fee of up to $100, and a possible assessment of up to $75 to cover the upkeep of the parking area. PX 101. Those tenants who chose not to sign the lease would "be allowed to move penalty free providing a 30 day written notice" was sent to the landlord.[2]

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[1] A list of Tenant's exhibits offered and received in evidence is attached as an appendix to this Final Order.

[2] Aeon, as the owner of record, could have been named as the sole housing provider or an additional housing provider in the tenant petition. Instead, Tenant named only Iris Lattimore, the property manager. *See* n. 4 below. As property manager, Ms. Lattimore acted as agent for the owner.

Notwithstanding this proposal, the new Housing Provider did not immediately increase Tenant's rent or insist that he execute a new lease. Tenant presented no documentary evidence of any increase in his rent until April 2006, when the Housing Provider sent him a Notice of Increase in Rent Charged, dated April 26, 2006. PX 104. The Notice was signed by Iris C. Lattimore, the property manager for the building. It stated that his rent would increase by $17.00, effective June 1, 2006, with a new rent of $624. The change was attributed to Section 206(b) of the Rental Housing Act, an adjustment of general applicability. Tenant then submitted into evidence a Certificate of Election of Adjustment of General Applicability filed with the RACD on April 25, 2006. The certificate confirmed a 2.7% election of adjustment of general applicability for 2005, recording an increase in the rent ceiling of Tenant's apartment, No. 201, from $685 to $703, and an increase in Tenant's rent from $607 to $624. PX 117.[3]

On July 7, 2006, Ms. Lattimore served Tenant with a Notice To Correct or Vacate. PX 112. The Notice complained of "Late rental payments March 2006 – June 2006," and "Consistent late payments of rent." Housing Provider did not serve any further notices or institute an action for possession in the Superior Court of the District of Columbia Landlord/Tenant Branch.

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[3] The application of the CPI-W increase, or the adjustment of general applicability, was described by the District of Columbia Court of Appeals as follows: "The adjustment of general applicability allows housing providers the option to increase rent ceilings annually in order to keep up with inflation. The adjustment 'shall be equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C. Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the preceding calendar year,' subject to a cap of ten percent. D.C. Code § 42-3502.06(b). It is the RHC's duty to determine the amount of the general applicability adjustment annually and publish it by March 1 of each year. *See id.* and D.C. Code § 42-3502.02(a)(3). The adjustment is published annually in the D.C. Register with an effective date of May 1." *Sawyer Prop. Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 104 (D.C. 2005) (footnotes omitted).

B. The Tenant Petition

On July 19, 2006, twelve days after he received Housing Provider's Notice To Correct or Vacate, Tenant filed his tenant petition with the RACD. The sole Housing Provider named in the tenant petition was Iris C. Lattimore, property manager for the building.[4] Tenant checked boxes on the tenant petition form alleging that: (1) Housing Provider failed to file the proper rent increase forms with the RACD; (2) Housing Provider took a rent increase while the rental unit was not in substantial compliance with the Housing Regulations; (3) Tenant's rent was increased while a written lease prohibiting such an increase was in effect; (4) retaliatory action was directed against Tenant in violation of the Rental Housing Act; and (5) Housing Provider served a notice to vacate on Tenant in violation of the requirements of the Rental Housing Act.

Tenant did not check boxes for other complaints that were designated on the tenant petition form. He did not complain that: (1) his increase was larger than the amount of increase allowed under the Rental Housing Act; (2) his rent exceeded the legally calculated rent ceiling for his unit; (3) the rent ceiling filed with the RACD was improper; or (4) services and/or facilities in his unit or in the building had been eliminated or substantially reduced. The omission is significant because Tenant's evidence at the hearing could have supported a number of possible violations of the Rental Housing Act. But this administrative court is limited to considering the violations that Tenant "specifically claim[ed]" in his tenant petition so as to give Housing Provider "fair notice of the grounds upon which a claim is based, so that the defending party has the opportunity to adequately prepare its defense and thus ensure that the claim is fully

[4] The Rental Housing Act defines a housing provider as "a landlord, an owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District. Ms. Lattimore signed the Notice of Increase in Rent Charged (PX 104) on the line for the signature of the "owner/agent." Accordingly, she qualified as a housing provider under the Act.

and fairly litigated." *Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 330, 333 (D.C. 2005).

C. The Hearing

On December 21, 2006, Ms. Lattimore was served with a Case Management Order directing her to appear for a hearing on January 23, 2007, at 1:30 p.m. The Order stated in bold face type that: "If you do not appear for the hearing you may lose your case."

The case was called for hearing on January 23, 2007 at 1:45 p.m. Tenant/Petitioner Lonzo Pickett appeared. Housing Provider/Respondent Iris C. Lattimore did not appear. After determining that Ms. Lattimore had received proper notice of the hearing, I proceeded to take testimony from Mr. Pickett.

The Case Management Order was mailed to Ms. Lattimore by Priority Mail with Delivery Confirmation to the address given in the tenant petition, 12138 Central Avenue, Suite 513, Mitchellville, MD 20721. This was the address given for the owner of record, Aeon Investment Group LLC, on the amended registration forms filed with the RACD. PXs 116, 117, 118. It is also the address that was given on three notices that were sent to the building residents after Aeon assumed ownership. PXs 101, 102, 103. The web site of the United States Postal Service confirmed delivery of the Case Management Order to that address on December 23, 2006.

OAH Rule 2818.3, 1 DCMR 2818.3 provides, in part, that:

> Unless otherwise required by statute, these Rules or an order of this administrative court, where counsel, an authorized representative, or an unrepresented party fails, without good cause,

> to appear at a hearing . . . the presiding Administrative Law Judge may . . . enter an order of default in accordance with D.C. Superior Court Rule 39-I.[5]

Because the CMO setting the hearing date was mailed to Housing Providers' address of record on file with the Rent Administrator, and was confirmed to be delivered by the Postal Service, Housing Providers received proper notice of the hearing date. *Dusenbery v. United States*, 534 U.S. 161, 167-71 (2002); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Svcs.*, 572 A.2d 443, 445 (D.C. 1990) (notice sent to address provided by appellant was proper notice); *Carroll v. District of Columbia Dep't of Employment Svcs.*, 487 A.2d 622, 624 (D.C. 1985) (notice sent to address provided by respondent was adequate to comply with due process). Proceeding in Housing Providers' absence was therefore appropriate.[6]

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[5] Super Ct. Civ. R. 39-I(c) provides: "When an action is called for trial and a party against whom affirmative relief is sought fails to respond, in person or through counsel, an adversary may where appropriate proceed directly to trial. When an adversary is entitled to a finding in the adversary's favor on the merits, without trial, the adversary may proceed directly to proof of damages."

[6] In the one year period between the time the building changed ownership and the time Tenant filed his petition, Housing Provider or Housing Provider's management company gave Tenant documents that reflected four different addresses for Housing Provider. *See* PXs 101-103; 106, 109 & 114; 108; 111. Tenant complained about these frequent changes which he found "confusing." PX 113. This administrative court reviewed the RACD files for the housing accommodation at the time this decision was prepared to ensure that the address given in the tenant petition was the address of record at the time the Case Management Order was served. The file for the property contained a Certificate of Notice of Increase in Rent Charged filed April 30, 2007, three months after the hearing, listing yet another address for Aeon Investment Group, 8787 Branch Avenue, Suite 177, Clinton, MD 20735. The last address given prior to that filing, in the Amended Registration Form filed December 15, 2005, was the address at 12138 Central Avenue, No. 513, Mitchellville, MD, 20721. PX 119. This was the address tenant gave for Housing Provider in the tenant petition and the address to which the Case Management Order was served and confirmed delivered. To ensure that Housing Provider will receive it, a copy of this decision will be mailed to Housing Provider's new address as well as to the address given in the tenant petition.

D. Tenant's Claim that Housing Provider Failed To File Proper Forms

Tenant's first complaint in the tenant petition, is that "The Housing Provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division." In his testimony, Mr. Pickett did not explain why any of the forms that Housing Provider filed with the Rent Administrator were improper or what forms, if any, Housing Provider did not file that were required to be filed. Mr. Pickett did introduce into evidence four documents certified to be on file with the Rent Administrator. These were: (1) an amended registration (PX 116) and corrected amended registration (PX 119), filed December 15, 2005, designating a change of ownership to Aeon Investment Group LLC;[7] (2) a Certificate of Election of Adjustment of General Applicability, filed April 25, 2006 (PX 117), reporting an increase in the rent ceiling of Tenant's apartment from $685 to $703, and an increase in the rent charged from $607 to $624, on account of the 2005 CPI-W increase of 2.7%; (3) an amended registration form and certificate of occupancy filed September 8, 2005, showing Aeon Investment Group, LLC as owner of the property (PX 118).

Although these forms might be construed as evidence that Housing Provider did not properly take or perfect appropriate increases in the rent ceiling or implement a proper rent increase, the tenant petition did not complain that the rent increase was larger than the amount allowed under the Rental Housing Act, that the rent exceeded the legally calculated rent ceiling, or that the rent ceiling filed with the RACD is improper.[8] Tenant presented no testimony or

[7] The corrected amended registration (PX 119) reported a change in the rent ceiling of Tenant's apartment, No. 201, from $542 to $685 as of November 4, 2004 on account of a vacancy increase under section 213(a)(6) of the Rental Housing Act, D.C. Official Code § 42-3502.13(a)(6).

[8] The corrected Amended Registration Form filed December 15, 2006, PX 119, recorded an increase in the rent ceiling based on a vacancy increase that occurred on November 4, 2004, more than one year before. Prior to its amendment in August, 2006, the Rental Housing Act of

other evidence to support his complaint that the proper rent increase forms had not been filed. Nor is there any indication that the forms that Tenant submitted into evidence were improper on their face.[9] Therefore, I must conclude that Tenant has not sustained his burden of proof on this issue.

E. Tenant's Claim that a Rent Increase Was Taken While the Unit Was Not in Substantial Compliance with the D.C. Housing Regulations.

Tenant's second complaint is that Housing Provider's rent increase was taken while his unit was not in substantial compliance with the District of Columbia Housing Regulations. Here, in the absence of any contest by Housing Provider, I conclude that Tenant has proven his case.

Mr. Pickett testified he complained about continuing problems with his apartment from the time he moved in. Among these were complaints that (a) the toilet in the bathroom did not work properly; (b) electrical outlets in the apartment baseboards were defective and would pull out of the wall; (c) the apartment windows were not properly sealed; (d) there was a large space

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1985 allowed a housing provider to increase the rent ceiling in an apartment that became vacant by the greater of either 12% of the existing rent ceiling or to the rent ceiling of a "substantially identical rental unit in the same housing accommodation." D.C. Official Code § 42-3502.13. But the Housing Provider was required to take and perfect a vacancy increase by filing an amended registration form with the Rent Administrator within 30 days of when the rental unit became vacant. 14 DCMR 4207.5; *SawyerProp. Mgmt. v. District of Columbia Rental Hous. Comm'n*, 877 A.2d 96, 109 (D.C. 2006).

Similarly, a Housing Provider is required to take and perfect a rent ceiling adjustment of general applicability "within thirty (30) days following the date when the housing provider is first eligible to take the adjustment. 14 DCMR 4204.10(c). Presumably Housing Provider first became eligible to take the 2005 adjustment within 30 days of May 1, 2005, when the adjustment was authorized. 52 D.C. Reg. 1089 (Feb. 4, 2005). Housing Provider's Certificate of Election of Adjustment of General Applicability recording its perfection of the 2005 CPI-W adjustment was not filed until April 25, 2006, nearly one year after Housing Provider would have been eligible to take the adjustment.

[9] The Certificate of Election of Adjustment of General Applicability contained the information required by 14 DCMR 4204.10, notwithstanding that it may not have been timely filed.

under the front door that allowed cold air in during the winter; (e) the apartment was frequently infested with cockroaches; (f) the railing to the stairs leading to the apartment was not properly secured and prone to coming out. Mr. Pickett testified that he gave written notice to Ms. Lattimore about these problems in a letter of July 11, 2006, sent shortly before the tenant petition was filed. PX 114.[10] The letter itself refers to previous complaints. ("[Y]ou were informed of repairs that were and still are needed to my apartment.") I credit Mr. Pickett's testimony that the problems he complained of had existed since he moved into the apartment and that he gave Housing Provider notice of these problems on several occasions before Housing Provider implemented Tenant's rent increase on June 1, 2006.[11]

The Rental Housing Act provides that a Housing Provider may not implement a rent increase unless the rental unit and common elements are in "substantial compliance with the housing regulations." D.C. Official Code 42-3502.07(a)(2)(A). Tenant did not submit any reports of housing code violations in his apartment or other direct evidence that the conditions he described constituted substantial violations of the housing code. But direct evidence is not necessary. The District of Columbia Municipal Regulations provide that certain conditions are deemed to be "substantial housing violations" under the Rental Housing Act. Among the conditions enumerated in 14 DCMR 4216.2 are: "(e) Defective electrical wiring, outlets, or fixtures; (f) Exposed electrical wiring or outlets not properly covered; . . . (h) Defective drains, sewage systems, or toilet facilities; (i) Infestation of insects or rodents; . . . (o) Dangerous

[10] Mr. Pickett prepared two other letters describing his complaints in more detail. PXs 114, 115. But he testified that he did not send these letters to Housing Provider.

[11] To establish that a tenant's unit is in substantial violation of the housing code, the tenant must present evidence that the housing provider was on notice of the violations. *Gavin v. Fred A. Smith Co.*, TP 21,918 (RHC Nov. 18, 1992) at 4.

porches, stairs, or railings . . . (q) Doors or windows insufficiently tight to maintain the required temperature or to prevent excessive heat loss."

Although Mr. Pickett's testimony concerning his complaints about the conditions in his apartment was vague about the details of the complaints and he could not provide specific dates for any of his complaints, I find he sustained his burden of proving by a preponderance of the evidence that the rental unit was in substantial violation of the housing code at the time Housing Provider implemented the rent increase. Some of the conditions Mr. Pickett described, such as the problems with the wall outlets, the defective toilet, and the cracks surrounding the windows and the door, constituted substantial housing violations under the Rental Housing Act and the regulations that implement the Act. *See* 14 DCMR 4216.2. He testified unequivocally that these conditions existed at the time the rent increase was implemented, and that he complained about them before the rent increase was implemented.

The Rental Housing Act provides that rent for any rental unit shall not be increased above the "base rent," unless "[t]he rental unit and the common elements are in substantial compliance with the housing regulations, if noncompliance is not the result of tenant neglect or misconduct." D.C. Official Code § 42-3502.08(a)(1)(A). The RACD regulations implementing this restriction prohibit a housing provider from implementing a rent adjustment unless "[t]he rental unit and the common elements of the housing accommodation are in substantial compliance with the D.C. Housing Regulations, or any substantial noncompliance is the result of tenant neglect or misconduct." 14 DCMR 4205.5.[12]

[12] There was no evidence here of any misconduct by Tenant.

In turn, the Housing Provider's implementation of a rent increase in violation of the Rental Housing Act triggers the penalties provided under the Act. The Act provides that:

> "Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of [the Rent Stabilization Program] . . . shall be held liable . . . for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the [Administrative Law Judge] determines."

D.C. Official Code § 42-3509.01(a).

Here the Tenant presented no evidence of bad faith on the part of the Housing Provider, so I will award a rent refund of $17 per month, the difference between the rent that the Housing Provider demanded ($624) and the rent that Tenant was paying at the time the rent increase was implemented ($607). Because Mr. Pickett testified that the housing code violations had not been abated as of the date of the hearing, the refund will extend from the date the rent increase was due to be implemented, June 1, 2007, to the date of the hearing, January 23, 2007, 7.74 months. *See Redmond v. Majerle Mgmt. Inc.*, TP 23,146 (RHC Mar. 26, 2002) at 46, *aff'd on other grounds,* 866 A.2d 41 (D.C. 2004) (when violations are continuing in nature the refund for an improper rent adjustment may go up to the date of the hearing). The total refund is $131.61.

F. Tenant's Claim That His Rent Was Increased While a Written Lease Prohibiting the Increase Was in Effect

The third complaint checked in the tenant petition is a box that states: "My/our rent was increased while a written lease, prohibiting such increases, was in effect." I find Tenant has failed to sustain his burden of proof on this issue.

The sole written lease that Tenant submitted into evidence was one executed on behalf of the previous building owner on November 24, 2004. The lease stated that it commenced on December 1, 2004 and ended on November 30, 2005. PX 100. After the building was sold, the new Housing Provider sent the residents a letter announcing a proposal to negotiate new leases in July, 2005. PX 101. But there is no evidence that Housing Provider sought to increase Tenant's rent until April, 2006, when Housing Provider sent Tenant a Notice of Increase in Rent Charged. PX 104. By then, the written lease had expired.

The only written evidence of the rent that Mr. Pickett actually paid is the rent receipt that Ms. Lattimore gave him on May 8, 2006, for $628. PX 105. The amount of rent received is precisely equal to the amount set in the written lease, $607, plus a $15 surcharge for air conditioning. PX 107.

Mr. Pickett's testimony about the amount of rent that he paid prior to June 2006 was inconclusive. Although he testified that he paid $700 in September, 2005, he explained that he was compensated for this overpayment by paying only $500 the following month. Moreover, he never asserted or offered any documentary proof that the Housing Provider had demanded the $700 payment. Nor did he submit any check stubs or vouchers for money orders to show that he ever paid more than the amount of rent prescribed in the original lease. I conclude, therefore,

that Housing Provider did not increase or propose to increase Tenant's rent until April, 2006, after the written lease had expired.

G. Tenant's Claim of Retaliatory Action

Tenant also asserted a claim of retaliation. Tenant checked a box on the tenant petition asserting that: "Retaliatory action has been directed against me/us by my/our Housing Provider, manager, or other agent for exercising our rights in violation of Section 502 of the Rental Housing Act Emergency [sic] Act of 1985."

The Rental Housing Act of 1985 prohibits a housing provider from taking "any retaliatory action against any Tenants who exercise any right conferred upon the Tenants by this chapter." Retaliatory action includes "any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, [or] which would unlawfully increase rent . . . . D.C. Official Code § 42-3505.02(a). *See also* 14 DCMR 4303.3 ("Retaliatory action shall include . . . (a) Any action not otherwise permitted by law which seeks to recover possession of a rental unit; (b) Any action which would unlawfully increase rent. . . ."). The evidence here shows that Housing Provider proposed to recover possession of the rental unit and increased the rent unlawfully. But the evidence does not show that these acts were retaliatory.

The Housing Regulations define retaliatory action as "action intentionally taken against a tenant by a housing provider to injure or get back at the tenant for having exercised rights protected by Section 502 of the Act." 14 DCMR 4303.1. It follows that there must be some proof that Housing Provider's decision to serve the Notice To Correct or Vacate or to implement

Tenant's rent increase were motivated by an intent to injure or get back at Tenant for exercising his rights. This proof is absent.[13]

The Notice To Correct or Vacate specifies consistent late payments from March 2006 through June 2006 as its justification. Mr. Pickett acknowledged that he was late in his rent payments during this time. Although he gave explanations for his delays — he was unsure of where to make the payments, he wanted to get a receipt for his payments, and he wanted to get Ms. Lattimore's attention so he could get repairs to his apartment — his testimony confirms that Housing Provider's justification for serving the Notice To Correct or Vacate was appropriate. Once Mr. Pickett resumed timely payment of his rent Housing Provider stopped attempting to evict him.

Similarly, there is no evidence that Housing Provider's rent increase was prompted by any retaliatory motive. Tenant's lease expired seven months before the proposed rent increase was implemented. The increase was based on the annual adjustment of general applicability that all housing providers are entitled to take. Although Housing Provider may not have properly taken and perfected the rent ceiling increase on which the adjustment was based,[14] there is no evidence that Housing Provider implemented the rent increase as a retaliatory act.

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[13] The Rental Housing Act provides that if a tenant makes a "witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or rental unit into compliance with the housing regulations" retaliation is presumed and may only be rebutted by clear and convincing evidence adduced by the housing provider. D.C. Official Code § 42-3505.02(b). The presumption does not apply here because Mr. Pickett's oral complaints in March and April of 2006 were not witnessed, and he did not submit his written complaint (PX 113) until July 16, 2006, after he was served with the July 7 Notice To Correct or Vacate (PX 112).

[14] See n. 8 *supra*.

H. Tenant's Claim That He Was Served With an Improper Notice To Vacate

Tenant's final claim in the tenant petition is that: "A Notice to Vacate has been served on me/us which violates the requirements of section 501 of the Act." Section 501 of the Rental Housing Act, D.C. Official Code § 42-3505.01(b) provides that "A housing provider may recover possession of a rental unit where the tenant is violating an obligation of tenancy and fails to correct the violation within 30 days after receiving from the housing provider a notice to correct the violation or vacate." The notice to vacate here, PX 112, was prepared on a standard form and included the information required by the Rental Housing Act and the applicable regulations: (a) a statement of the factual basis for eviction, including a reference to the provisions on which the claim of eviction was grounded — consistent late rental payments; (b) the time by which the apartment had to be vacated if the violation was not cured; (c) a statement that the housing accommodation was registered and the registration number; and (d) a statement that a copy of the notice to vacate was being furnished to the Rent Administrator, together with the address to which it was sent. *See* D.C. Official Code § 41-3505.01(a); 14 DCMR 4302.1.

In addition to containing the information required by law, the Notice To Correct or Vacate was served on Tenant for a proper reason. It identified Tenant's consistent late payment of rent as the reason for service of the Notice. Tenant acknowledged that he was late in paying his rent. Thus, there is no evidence that Housing Provider's service of the Notice was motivated by any reason other than the one that was stated. Tenant failed to sustain his burden to prove that the notice to vacate was improper.

I. Interest

The Rental Housing Commission Rules implementing the Rental Housing Act provide for the award of interest on rent refunds at the interest rate used by the Superior Court of the District of Columbia from the date of the violation to the date of issuance of the decision. 14 DCMR 3826.1 – 3826.3; *Marshall v. District of Columbia Rental Hous. Comm'n*, 533 A.2d 1271, 1278 (D.C. 1987). Interest through the date of the decision is appropriate here because Mr. Pickett testified that, as of the date of the hearing, Housing Provider failed, to abate presumptive housing code violations, such as the exposed wall sockets and malfunctioning toilet.

Schedule A, below, computes the interest due on each month's overcharge at the six percent interest rate set for judgments of the Superior Court of the District of Columbia on the date of the hearing.

Interest Chart
TP 28,717
Date of Violation June 1, 2006, through January 23, 2007
Date of OAH Decision July 6, 2007

A	B	C	D	E	F
Dates of Overcharges	Amount of Overcharge	Months Held by Housing Provider	Monthly Interest Rate	Interest Factor (CxD)	Interest Due (BxE)
June 2006	$17.00	13.19[15]	.005[16]	.066	$1.12
July 2006	$17.00	12.19	.005	.061	$1.04
Aug. 2006	$17.00	11.19	.005	.056	$.95

[15] The months that the overcharge was held by the Housing Provider is computed beginning in June, 2006, the month of Tenant's rent increase, through the date of this decision, July 6, 2007. The portion attributable to July 2007 is prorated, 6/31 = .19.

[16] The monthly interest rate is the 6% annual interest rate on judgments of the Superior Court of the District of Columbia on the date of the hearing, January 23, 2007, divided by 12, or .005.

A	B	C	D	E	F
Dates of Overcharges	Amount of Overcharge	Months Held by Housing Provider	Monthly Interest Rate	Interest Factor (CxD)	Interest Due (BxE)
Sept. 2006	$17.00	10.19	.005	.051	$.87
Oct. 2006	$17.00	9.19	.005	.046	$.78
Nov. 2006	$17.00	8.19	.005	.041	$.70
Dec. 2006	$17.00	7.19	.005	.036	$.61
Jan. 2007	$12.61[17]	6.19	.006	.031	$.39
Total	$131.61				$6.45

Tenant's total award is $138.06, consisting of his rent refund, $131.61, plus interest of $6.45.

III. Findings of Fact

1. On November 18, 2004, Tenant/Petitioner Lonzo Pickett leased Apartment No. 201 at 520 Eastern Avenue, N.E., Washington, D.C. The lease was for a term of one year, beginning December 1, 2004 and ending November 30, 2005, at a rent of $607 per month plus utilities. PX 100.

2. In July, 2005, Tenant's housing accommodation was sold to Aeon Investment Group, LLC. A letter to the residents dated July 11, 2007, informed Tenant that Iris Lattimore would be a representative of Aeon and that payments should be sent to Aeon at 12138 Central Avenue, Suite 513, Mitchellville, MD 20721. PX 102.

[17] Tenant's rent refund for January 2007 runs only through the date of the hearing, January 23, 2007, so the award is prorated. The monthly overcharge, $17.00, is multiplied by 23/31, or .74, to derive an overcharge of $12.61 for that month.

3. In a letter of July 25, 2005, Aeon informed Tenant and the other residents that it would negotiate new lease agreements and would impose a utility fee. PX 101. Aeon did not follow up on this letter and never proposed a new lease agreement to Tenant.

4. In November, 2005, Tenant received a letter from Ms. Lattimore informing Tenant and the other residents that TLT Investments had assumed property management of the housing accommodation and Ms. Lattimore was responsible for "all management responsibilities in your building." The tenants were informed that the address of TLT Investments was P.O. Box 614, Lanham MD 20703. But Tenants were directed to continue making rental payments to Aeon. PX 109.

5. In February, 2006, Ms. Lattimore sent Tenant a notice instructing him to mail rental payments to Aeon at 12138 Central Avenue, Suite 513, Mitchellville, MD 20721. PX 103. Subsequently, Tenant was given notices to mail rental payments to Aeon at addresses on Coventry Way, Clinton, MD. PXs 108, 111. Amended registration forms filed with the Rent Administrator in September and December of 2005 designated Aeon's address as 12138 Central Avenue, Suite 513, Mitchellville, MD 20721. PX 116, 118, 119. Aeon did not change this address in any document filed with the RACD prior to the January 23, 2007, hearing date.

6. On April 26, 2006, Ms. Lattimore delivered a Notice of Increase in Rent Charged to Tenant. PX 104. The Notice stated that Tenant's rent would be increased from $607 to $624 effective June 1, 2007, based on a certificate of election of general applicability.

7. At the time the rent increase took effect, June 1, 2006, Tenant's rental unit contained a number of defects that needed repair, including a bathroom toilet that did not flush, windows that did not have screens and did not close tightly, a gap under the front door that allowed cold air

and bugs to enter the apartment, electrical wall sockets that were loose and needed replacing, and heating vents along the baseboards that were loose and needed replacing. In addition, the handrail on the front steps to the apartment was loose. These defects continued to exist up through the date of the hearing.

8. Tenant complained verbally about the problems in his apartment to Ms. Lattimore and to other representatives of the owner on a number of occasions between December, 2004 and April, 2006. Although Housing Provider made certain repairs, Ms. Lattimore and the owner did not fix the defects described above. Tenant did not put any of his complaints in writing until July 16, 2006, when he wrote a letter to Ms. Lattimore after receiving Housing Provider's Notice To Correct or Vacate. PX 113.

9. From March 2006 through June 2006 Tenant paid his rent late. On July 7, 2006, Housing Provider served Tenant with a Notice To Correct or Vacate (PX 112). The Notice stated that Tenant violated the obligations of his tenancy by making late rental payments from March 2006 through June 2006. Housing Provider took no further action to make Tenant quit the apartment after serving the Notice To Correct or Vacate.

10. On July 19, 2006, Tenant/Petitioner Pickett filed his tenant petition with the RACD alleging violations of the Rental Housing Act. On December 19, 2006, this administrative court issued a Case Management Order directing the parties to appear for a hearing on January 23, 2007, at 9:30 a.m. at the Office of Administrative Hearings, 941 North Capitol Street, N.E., Suite 9100 (9th Floor), Washington, D.C. The CMO cautioned that **"If you do not appear for the hearing, you may lose the case."**

11. A copy of the CMO was served on Housing Provider/Respondent Iris C. Lattimore by Priority Mail with Delivery Confirmation (Postage Paid) at 12138 Central Avenue, Suite 513, Mitchellville, MD 20721. Delivery of the CMO to that address at 12:46 p.m. on December 23, 2006, was confirmed on the web site of the United States Postal Service, receipt No. 0306 1070 0001 1367 4744.

12. The case was called for hearing at 9:45 a.m. on January 23, 2007. Tenant appeared and testified. Respondent/Housing Provider did not appear.

IV. Conclusions of Law

1. This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1, 2006, the Office of Administrative Hearings has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03.

2. Respondent Iris C. Lattimore, as agent and property manager for the owner, is a Housing Provider under the terms of the Rental Housing Act. D.C. Official Code § 42-3501.03(15).

3. The CMO was mailed to the address of record given by the owner in filings with the RACD. In addition, it had been given to Tenant in numerous mailings. Housing Provider received proper notice of the hearing under the Rental Housing Act, D.C. Official Code §

42-3502.16(c), and the notice conformed to the constitutional requirements for due process. Therefore it was appropriate to proceed with the hearing in Housing Provider's absence.

4. Housing Provider filed documents with the Rent Administrator, including amended registrations recording the new ownership of the property and an increase in Tenant's rent ceiling (PXs 116, 119), and a Certificate of Election of Adjustment of General Applicability (PX 117) recording the basis for the rent increase that Housing Provider implemented as of June 1, 2006. Tenant has not proven that any of the forms that Housing Provider filed with the Rent Administrator were improper or that Housing Provider failed to file any forms that were required.

5. Tenant has not contended that his rent increase was larger than that allowed under the Rental Housing Act, that the rent charged exceeded the rent ceiling, or that the rent ceiling filed with the RACD was improper. Accordingly, this administrative court will not reach those issues.

6. On April 16, 2006, when Housing Provider served Tenant with a Notice of Increase in Rent Charged, and June 1, 2006, when the rent increase took effect, Tenant's rental unit was not in substantial compliance with the District of Columbia Housing Regulations. Substantial violations of the Housing Regulations continued through the date of the hearing, January 23, 2007. Tenant gave Housing Provider adequate notice of these violations and the need for appropriate repairs prior to April 16, 2006.

7. Because Housing Provider increased Tenant's rent at a time when the rental unit was not in substantial compliance with the Housing Regulations, Tenant is entitled to a refund of the amount of the rent increase, $17 per month, from the date the increase was effective through the date of the hearing. Tenant's total refund is $131.61.

8. Tenant failed to prove that Housing Provider increased Tenant's rent while a written lease prohibiting such an increase was in effect. The written lease between Tenant and Housing Provider expired on November 30, 2005, before Housing Provider implemented the rent increase.

9. Tenant failed to prove that Housing Provider directed retaliatory action against Tenant in violation of the Rental Housing Act. Although Housing Provider implemented an increase in rent and served Tenant with a Notice To Correct or Vacate after Tenant complained about the need for repairs, Housing Provider had legitimate reasons for these acts and there is no evidence that Housing Provider's acts had a retaliatory aim.

10. Tenant failed to prove that Housing Provider served Tenant with a Notice To Vacate in violation of the Rental Housing Act. Housing Provider served Tenant with a Notice To Correct or Vacate for the legitimate reason that Tenant had consistently paid his rent late. The Notice contained the information required by law.

11. Tenant is entitled to interest on his award in the amount of 6% per annum for each month that Housing Provider demanded the increased rent through the date of the hearing. Tenant is awarded interest of $6.45 for a total award of $138.06.

V. Order

Accordingly, it is this **6th** day of **July, 2007**

ORDERED that Housing Provider Iris C. Lattimore pay Tenant Lonzo Pickett **ONE HUNDRED AND THIRTY-EIGHT DOLLARS AND SIX CENTS ($138.06);** and it is further

ORDERED that either party may move for reconsideration of this Final Order within ten days under OAH Rule 2937, 1 DCMR 2937; and it is further

ORDERED that the appeal rights of any party aggrieved by this Order are stated below.

/s/
Nicholas H. Cobbs
Administrative Law Judge

APPENDIX

Tenant/Petitioner's Exhibits in Evidence

Exhibit No.	Description
PX 100	Lease Agreement dated November 18, 2004
PX 101	Notice from Aeon Investment Group to Residents of 520 Eastern Avenue dated July 25, 2005
PX 102	Notice from Aeon Investment Group to Residents of 520 Eastern Avenue dated July 11, 2005
PX 103	Notice from Ms. Lattimore to tenants at 520 Eastern Avenue dated February 3, 2006
PX 104	Notice of Increase in Rent Charged, dated 4/26/06
PX 105	Rent Payment Receipt dated 5/8/2006
PX 106	Notice of Strict Enforcement of Rental Policies (undated, effective 5-1-06)
PX 107	Memo from Iris Lattimore to Tenants of 520 Eastern Avenue re Air Conditioning, dated May 3, 2006
PX 108	Notice of New Mailing Address for Rental Payments (effective June 2006)
PX 109	Memo from Iris Lattimore, TLT Investments, re Introduction to Property Management (undated)
PX 110	Memo from Iris Lattimore, TLT Investments to All Tenants re Vacation, dated June 23, 2006
PX 111	Address Correction (undated)
PX 112	Notice To Correct or Vacate dated 7-7-06
PX 113	Letter from Lonzo Pickett to Ms. Lattimore dated July 16, 2006
PX 114	Letter from Lonzo Pickett to Ms. Lattimore dated July 11, 2006 (not sent)
PX 115	Letter from Lonzo Pickett to Ms. Lattimore dated July 26, 2006 (not sent)
PX 116	Amended Registration Form filed Dec. 15, 2005
PX 117	Certificate of Election of Adjustment of General Applicability, file Apr. 25, 2006
PX 118	Amended Registration Form filed Sep. 8, 2005
PX 119	Amended Registration Form, Corrected Copy, filed Dec.15, 2005
PX 120	Bank of America Statement, 8-26-05 – 09-26-05